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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,415	03/26/2004	Wiebke Lindemann	P25065	6812

7055 7590 08/02/2007

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EXAMINER	
JEAN-LOUIS, SAMIRA JM	

ART UNIT	PAPER NUMBER
1609	

NOTIFICATION DATE	DELIVERY MODE
08/02/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

Office Action Summary	Application No.	Applicant(s)	
	10/809,415	LINDEMANN ET AL.	
	Examiner	Art Unit	
	Samira Jean-Louis	1609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10-41* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *10-41* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claim(s) 10-39, drawn to a cosmetic composition, classified in class 424, subclass 401.

II. Claim(s) 40-41, drawn to a method of reducing the stickiness of a glycerol containing cosmetic composition, wherein the method comprises incorporating the glycerol in above-said composition, classified in class 424, subclass 401.

The inventions are distinct, each from the other because of the following reasons: Inventions I and II are related as a composition and a method of reducing the stickiness of a glycerol-containing cosmetic via incorporating the glycerol in said composition. These inventions as claimed can be shown to be distinct if either or both of the following can be shown: 1) the method for reducing stickiness using glycerol in said composition as claimed can be used with any other materially different products or 2) the composition as claimed can be used in a materially different processes (See MPEP 806.05 (h)). In this particular instance, the composition claimed by applicant can be practiced with a materially different method such as to reduce aging of the skin.

Consequently, due to the reasons listed above, these inventions are distinct and a search required for Group I (i.e the composition) is not required for Group II (i.e. said method). In addition, while the searches for Group I and II may be overlapping, in searching Group I, the Examiner will solely base the search on the patentability of the aforementioned composition. Conversely, in searching for Group II, the Examiner will specifically focus the search on the patentability of the method of use. Accordingly, a search for both groups would pose an undue burden on the Office (see MPEP § 808.02).

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Species Election

Claim(s) 10-41 are generic to a plurality of disclosed patentably distinct species comprising a silicone oil, a fatty alcohol, a dicaprylyl ether, an emulsifier, a moisturizer and a metal oxide pigment. The species are independent or distinct because these species are so diverse that a reference anticipating one of the species would not anticipate or render obvious the other species. Thus the stated species are capable of supporting separate patents. Therefore, applicant's election should identify a particular

type of (1) silicone oil, (2) fatty alcohol, (3) dicaprylyl ether, (4) emulsifier, (5) moisturizer and (6) metal oxide pigment for invention group I and group II.

In addition, in claim(s) 17, 30, 32 and 33, applicant need to disclose if a co-emulsifier, a self-tanning substance, a skin whitening agent and a repellent agent will or will not be included in the dermatological composition and if included, applicant is required to identify a particular type of species for each agent listed above.

Furthermore, in claim(s) 37, applicant disclosed that the said composition is comprised of an O/W emulsion. Thus, applicant is required to identify if the lipid phase of such emulsion will entail only silicone oil or a mixture thereof (i.e. castor oil, mineral oils as disclosed in the specification on pg 9).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations

of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

A telephone call was made to Heribert T. Muenstere on July 23, 2007 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samira Jean-Louis whose telephone number is 571-270-3503. The examiner can normally be reached on 7:30-5 PM EST M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ardin H. Marschel 7/25/07
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER